IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.705 and 706 of 2007

The Commissioner of Income-tax, Salem. ..Appellant in both the T.C.(A)s.

Vs.

M/s.Ramachandra Hatcheries, 548, Tiruchy Main Road, Gugai, Salem. ..Respondent in both the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D', Chennai in I.T.A. Nos.147 & 148/Mds/2001 dated 24.02.2006 for the assessment years 1992-93 and 1993-94 against the order of the Commissioner of Income Tax [Appeals] Chennai 34, G.I.No./PA.No.R.1312/DC/1[2]/SLM dated 28.9.200 Assessment year 1992-93, 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98.

Against the order of the Deputy Commissioner of Income Tax Circle 1[2] PAN/GIR No.R.1312/DC.1[2]/SLM dated of Order 20.1.2000 respectively.

For Appellant : Mr.J.Narayanaswamy, Standing Counsel for Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

These appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Chennai Bench 'D', Chennai in I.T.A. Nos.147 & 148/Mds/2001 dated 24.02.2006, raising the following common substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that, the reopening of the assessment was bad in law under section 147/148 of the Income-tax Act, even though the assessing officer giving effect to the first Appellate Authority order in conformity with

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Supreme Court Judgment reported in 237 ITR 174 is as per law?"

2. The facts leading to the above substantial question of law are as under:-

The assessee is a partnership firm, running Hatcheries and Poultry. The relevant assessment years are 1992-93 and 1993-94 and the corresponding accounting years ended on 31.03.1992 and 31.03.1993, respectively. For the assessment year 1992-93, assessment was completed on 02.11.1998 under Section 143(3) read with Section 147 of the Income-tax Act ("Act" in short) determining a total income of Rs.3,10,280/-. For the assessment year 1993-94, assessment was completed on 27.10.1998 under Section 143(3) read with Section 147 of the Act determining a total income of Rs.4,74,970/-. Aggrieved by the assessment orders for both the years, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) partly allowed the appeals and granted relief in respect of the claim made by the assessee under Sections 80HH and 80-I of the Act by order dated 01.03.1999. By giving effect to the said Appellate Order, the assessments have been revised on 31.05.1999 allowing assessee's claim of deduction under Sections 80HH, 80HHA and 80-I of the Act. In the mean time, the Supreme Court in the case of Commissioner of Income-tax Vs. Venkateswara Hatcheries (P.) Ltd. and Others [1999] 237 ITR 174 (SC), considered the scope of provision under Sections 80HH, 80HHA, 80-I and 80J of the Act and held that the assessee does not produce chicks and also that the chicks are not "articles or things" and hence the assessee is neither an industrial undertaking nor it is engaged in the business of producing "articles or things", and hence the assessee is not entitled to allowance under Section 32A of the Act and deductions under sections 80HH, 80HHA, 80-I and 80J of the Act. In view of the above judgment of the Supreme Court, the assessee is not entitled for deductions under Sections 80HH, 80HHA and 80-I of the Act and hence the Assessing Officer in the present cases, issued reopening notices on the basis of the above Supreme Court judgment to the assessee. The assessee did not reply to the reopening notices and hence the Assessing Officer completed the reassessments and held that the assessee is not entitled to relief under Sections 80HH, 80HHA and 80-I of the Act. Aggrieved, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) rejected the claim of the assessee and dismissed the appeals. Aggrieved, the assessee filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeals and held that reopening of the assessment is bad in law. Hence the present appeals by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Assessing Officer is justified in reopening the assessments on the basis of the Supreme Court judgment in the case of Commissioner of Income-tax Vs. Venkateswara Hatcheries (P.) Ltd. and Others, cited supra. Hence the reopening of the assessments is in accordance with law.

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4. Heard the counsel. It is seen that the C.I.T.(A) earlier allowed the deductions claimed by the assessee under Sections 80HH and 80-I of the Act vide his order dated 01.03.1999 and the same has reached finality. The Assessing Officer also given effect to the said order of the C.I.T.(A) and granted relief to the assessee and later, the Assessing Officer issued reopening notices under Section 148 of the Act on the basis of the Supreme Court judgment cited supra. There is no dispute that the earlier C.I.T.(A)'s order has become final and also the Assessing Officer passed consequential orders in giving effect to the said C.I.T.(A)'s order. There was no further appeals by the Revenue. Though the said C.I.T.(A)'s order is erroneous in view of the Supreme Court judgment in the case of Commissioner of Income-tax Vs. Venkateswara Hatcheries (P.) Ltd. and Others, cited supra, the same has not been set aside by the process known to law. The Tribunal considered this aspect and held in Paragraph 3 of its order, as follows:-

> "The original assessment in these cases was completed on 2.11.98 under sec.143(3) read with sec.147 of the I.T. Act. These were subjected to appeal. The CIT (Appeals) allowed the deduction claimed by the Assessee under sec.80HH and 80-I vide his order dated 01.03.1999. After passing the order by the CIT (Appeals), the assessment was reopened following the ratio of the judgment of the Hon'ble Supreme Court in the case of CIT v. Venkateswara Hatcheries (P) Ltd. & Others (237 ITR 174), vide Notice dated 11.10.1999. In our opinion, this is not correct. Even the bad order of the Appellate Authority has reached finality. The Assessing Officer cannot sit over judgment of the Appellate Order. The only option open to him is to prefer an appeal before the higher forum. The Assessing Officer, in this case, has failed to do so. In view of this, we hold that the re-opening of the assessment was bad in law. Accordingly, we annul the assessment and the ground taken by the Assessee is allowed."

From the above, it is clear that the Tribunal is correct in holding that the Assessing Officer has no jurisdiction to reopen the assessments under Section 147 of the Act. Unless and until the said order is set aside by the process known to law, the said order is valid in law as well as it binds on the lower authorities. Hence the Assessing Officer is not entitled to circumvent the earlier order passed by the C.I.T.(A) which had become final. Under such circumstances, the Assessing Officer should not reopen the assessment and seek to adjudicate on the issue which was already adjudicated by the Appellate Authority. The principles enunciated in this Court judgment in the case of Seshasayee Paper and Boards Ltd. Vs. Inspecting Assistant Commissioner of Income-tax [1986] 157 ITR 342 (Mad) as well as the Supreme Court judgment in the case of Commissioner of Income-tax, Delhi and Rajasthan Vs. Rao Thakur Narayan Singh, [1965] 56 ITR 234 (SC), would govern the facts of the present case. It has been

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held in this Court judgment cited supra, at Page Nos.344 and 345 as follows:-

> "When the Income-tax Officer gave effect to the direction of the Tribunal by making the computation by order dated December 7, 1977, undoubtedly he had correctly interpreted the order that, according to the Tribunal, the assessee was entitled to the benefit of section 80J. The attempt on the part of the Inspecting Assistant Commissioner now to take away the relief under section 80J virtually has the effect of amending the order of the Tribunal by reversing the view which is taken by the Tribunal, viz., the assessee is entitled to relief under section 80J of the Act. It was vehemently argued before us that section 80J(1A) of the Act has now been held to be valid by the Supreme Court. While this fact cannot be disputed, it is equally true that the decision of the Supreme Court does not automatically have the effect of vacating the order of the Tribunal which has been statutorily made final under section 254(4) of the Act and which has already been given effect to. Assuming for a moment as contended by the learned counsel for the Revenue that an infirmity is now created in the order by virtue of the decision of the Supreme Court, that order cannot be read as automatically been corrected nor is the effect given to that order automatically undone. Its legal validity is not in any way affected by the decision of the Supreme Court. Even a wrong order has a finality and unless that finality is disturbed by a process known to law or by a process authorised by law, the rights of the assessee and the Revenue will continue to be governed by the order of the Tribunal. There is no justification for the action of the Inspecting Assistant Commissioner in interfering with the order of the Income-tax Officer giving effect to the order of the Tribunal in his order under section 154. The proposition that the order of the Income-tax Officer merely gives effect to the relief as directed by the Income-tax Tribunal cannot be doubted. But even then, what is important is that the source of that order is the order of the Tribunal which still remains final between the Revenue and the assessee. So far as the order of the Appellate Assistant Commissioner is concerned, even there, by parity of reasoning, the only authority which will be entitled to interfere with the order of the Appellate Assistant Commissioner by way of rectification is the Appellate Assistant Commissioner himself. The order of the Income-tax Officer granting relief under section 80J for the assessment year 1974-75 is only an order which is consequential on giving effect to the order of the

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Appellate Assistant Commissioner. Under the guise of exercise of power under section 154 of the Act, the directions given by the Appellate Assistant Commissioner cannot be rendered ineffective. The Revenue had a right to agitate the correctness of the order of the Appellate Assistant Commissioner by taking the matter to the Tribunal. If the Revenue has not chosen to do that and allowed the directions of the Appellate Assistant Commissioner to stand, that order cannot now be undone by adopting the circuitous procedure of purporting to exercise the powers under section 154 of the Act. In our view, both these petitions must, therefore, be allowed. The notices issued under section 154 of the Act are quashed."

The Apex Court in the case of Commissioner of Income-tax, Delhi and Rajasthan Vs. Rao Thakur Narayan Singh, cited supra, considered the scope of reopening of the assessment and held as follows:-

"The Income-tax Act is a self-contained one. It creates a hierarchy of tribunals with original, appellate and revisional jurisdictions. Section 31 gives, inter alia, right of appeal against some orders of the Income-tax Officer to the Appellate Assistant Commissioner; section 33 provides for a further appeal to the Income-tax Appellate Tribunal; and sub-section (6) of section 33 says that save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final. Section 66 provides for reference to the High Court on a question of law; and section 66A provides for appeals in certain cases to the Supreme Court. It is clear from the said provisions that the order of the Tribunal made within its jurisdiction, subject to the provisions of section 66 of the Act, is final. Therefore, the decision of the Tribunal in respect of the subject-matter under appeal before it is final and cannot be reopened by the assessee or the department."

"....It is said that the words "has reason to believe that by reason of the omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment" are more comprehensive than the words "the Income-tax Officer discovers that income, etc., have escaped assessment in any year", and, therefore, though there was a finding by the Tribunal that the Income-tax Officer did not "discover" that there was escape of assessment, the Income-tax Officer under the amended section 34 can initiate proceedings in spite of that finding. We cannot accept this argument. It could not have been the intention of the legislature by amending the section to enable the

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> Income-tax Officer to reopen final decisions made against the revenue in respect of questions that directly arose for decision in earlier proceedings. The Tribunal held in the earlier proceedings that the Income-tax Officer knew all the facts at the time he made the original assessment in regard to the income he later on sought to tax. The said finding necessarily implies that the Income-tax Officer had no reason to believe that because of the assessee's failure to disclose the facts income has escaped assessment. The earlier finding is comprehensive enough to negative "any such reason" on the part of the Income-tax Officer. That finding is binding on him. He could not on the same facts reopen the proceedings on the ground that he had new information. If he did so, it would be a clear attempt to circumvent the said order, which had become final. We are not concerned in this appeal with a case where the Income-tax Officer got new information which he did not have at the time when the Tribunal made the order. The finding of the Tribunal is, therefore, binding on the Income-tax Officer and he cannot, in the circumstances of the case, reopen the assessment and initiate proceedings over again. If that was not the legal position, we would be placing an unrestricted power of review in the hands of an Income-tax Officer to go behind the findings given by a hierarchy of Tribunals and even those of the High Court and the Supreme Court with his changing moods."

The Tribunal had correctly applied the above principles and held that reopening of the assessment is bad in law, by rightly annulling the reassessments. We are also conscious of the fact that the Supreme Court in the case of Commissioner of Income-tax Vs. Venkateswara Hatcheries (P.) Ltd. and Others, cited supra has decided the matter against the assessee. Perhaps, the view taken by the C.I.T.(A) earlier which had arisen from the assessment proceedings, is erroneous. We need not examine the aspect on merits. In the present cases, the earlier C.I.T.(A)'s order has reached finality which arises from the earlier assessment proceedings. Hence the Assessing Officer has no jurisdiction to commence reassessment proceedings on the issue which has already been adjudicated upon by the C.I.T.(A). The Tribunal correctly decided the matter and the reasons given by the Tribunal are based on valid materials and evidence and we find no error or legal infirmity in the order of the Tribunal so as to warrant interference.

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5. Under the circumstances, no substantial question of law arises for consideration of this Court and accordingly, the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.706 of 2007 is closed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench 'D',
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) XII,
   Chennai-600 034.

4. The Deputy Commissioner of Income-tax, Circle-1(2),
   Salem-7.

5. The Asst. Registrar,
Income Tax Appellate Tribunal,
IIIrd Floor, Rajaji Bhavan,
Besant Nagar, Madras 90.

+ 1 CC To Mr. N.Muralikumaran, Advocate SR NO.41276

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